**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

| | | |
|---|---|---|
| SAMINA SULTAN, an individual, | ) | |
| | ) | |
| | ) | Case No. |
| Plaintiffs, | ) | |
| | ) | Judge |
| v. | ) | |
| M&T BANK, a New York banking corporation, Bayview Loan Servicing, LLC, a Florida limited liability company, | ) | Magistrate |
| | ) | |
| | ) | **JURY DEMANDED** |
| | ) | |
| Defendant(s). | ) | |

**COMPLAINT FOR VIOLATIONS OF THE**
**TRUTH-IN-LENDING ACT AND OTHER RELIEF**

NOW COMES the Plaintiff, SAMINA SULTAN ("Plaintiff"), by and through her attorneys, SWEIS LAW FIRM, P.C., complaining of Defendants M&T BANK, a New York banking corporation and BAYVIEW LOAN SERVICING, LLC, a Florida limited liability company, stating as follows:

## JURISDICTION

1. This Court has subject matter jurisdiction based upon federal question under 28 U.S.C. § 1331 and supplemental jurisdiction under 28 U.S.C. § 1367. This is an action asserting violations of federal statutes commonly known as TILA and Regulation Z. These claims all arise out of the same controversy and sequence of events.

2. Venue in this District is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2), in that a substantial part, of the events giving rise to the claims asserted herein occurred in this judicial district.

## PARTIES

3. Plaintiff, SAMINA SULTAN, is an individual who resides in Downers Grove, Illinois.

4. Defendant, M&T BANK, ("M&T"), is a New York Banking Corporation that does business in Illinois.

5. M&T uses the mails and telephone to provide consumers with mortgages.

6. M&T holds itself out to be a mortgage loan lender and mortgage loan servicer in the ordinary course of its business.

7. Defendant BAYVIEW LOAN SERVICING, LLC ("BAYVIEW") is a Florida limited liability company and engages in mortgage loan servicing.

## FACTS

8. Plaintiff is the owner of the property commonly known as 1430 Dickson Avenue, Downers Grove, Illinois.

9. On January 22, 2016, Plaintiff executed a permanent loan modification of a federally insured mortgage (hereinafter "mortgage") in favor of M&T Bank.

10. The loan modification capitalizes on previously owed debt to arrive at an adjusted modified unpaid principal balance. The cover letter to the modification breaks down the Unpaid Principal Balance, arrears and advances.

11. The loan modification figures and terms are as follows:

| | | |
|---|---|---|
| a. | Current Unpaid Principal Balance | $284,678.17 |
| b. | Delinquent Interest | $24,672.11 |
| c. | Escrow Advance/Negative Escrows | $52,577.96 |
| d. | Recoverable Balance, Foreclosure/Bankruptcy Costs | $5,062.00 |

e. Less Credits/Suspense Funds ($924.38)

f. **Adjusted Modified Unpaid Principal Balance** **$387,365.86**

g. Deferred Non-Interest Bearing Forbearance $0.00

12. The sum total of the Adjusted Modified Unpaid Principal Balance is not $387,655.86. Rather, the sum total is actually $366,065.86.

13. M&T's loan modification expressly states M&T extended new credit to the Plaintiff in the amount of one hundred two thousand six hundred eighty-seven dollars and sixty-nine cents ($102,687.69).

14. M&T's figure for the Adjusted Modified Unpaid Principal Balance is overstated, extending an additional amount of "phantom financing" totaling twenty-one thousand three hundred dollars ($21,300.00).

15. The $21,300.00 of "phantom financing" resulted in Plaintiff paying an additional $92.36 per month.

16. M&T's error results in Plaintiff paying a total of not less than $44,332.80 in additional finance charges over the term of the modified loan.

17. M&T failed to provide Plaintiff with a Truth-In-Lending Disclosure Statement (hereinafter "TIL") outlining the cost of the new credit extended by M&T.

18. M&T failed to disclose to Plaintiff the monthly payment, the number of payments required to pay off the loan, and failed to provide the Plaintiff with an amortization schedule for new and additional terms as discussed under the modification agreement.

19. M&T failed to provide Plaintiff with an itemization of prepaid finance charges.

20. Plaintiff has experienced increased levels of stress, mental anguish, and anxiety related to M&T's conduct.

21. Defendants' collective conduct is the proximate cause of tremendous stress and anxiety to Plaintiff.

22. Plaintiff, as a direct result of Defendant's conduct, was forced to retain litigation counsel to defend against this conduct, and was assessed legal fees and charges.

**COUNT I**
**SULTAN v. M&T BANK**
**Violation of Truth-In-Lending Act**

23. Plaintiff repeats and realleges paragraphs 1 through 22 as though fully set forth herein.

24. The Truth in Lending Act ("TILA") requires accurate disclosure of the material terms of any extension of consumer credit at the time of the origination of the loan or credit transaction. 15 U.S.C. § 1601. The five material disclosures required under TILA that give rise to specific remedies when not properly disclosed are: (1) annual percentage rate (APR), (2) finance charge, (3) amount financed, (4) total amount of payments to be made, and (5) the payment schedule 15 U.S.C. § 1638(a).

25. For a closed-end loan secured by a dwelling, the Truth in Lending Act requires a creditor to provide material disclosures related to the terms of the credit prior to consummation of the loan. 15 U.S.C. § 1638(b)(1); 12 C.F.R. § 226.17(b). One of the terms that is required to be disclosed under TILA is the annual percentage rate. 15 U.S.C. § 1632(a). The disclosure of the annual percentage rate must be disclosed clearly and conspicuously. Id. It must also be accurately disclosed.

26. 15 U.S.C. § 1635 provides that "any consumer credit transaction in which a security interest, including any such interest arising by operation of law, is or will be retained or

acquired in any property which is used as the principal dwelling of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business say following the consummation of the transaction ...”

27. 15 U.S.C. § 1635(b) provides that “when an obligor exercises his right to rescind under subsection (a), he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, down payment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction.”

28. 15 U.S.C. § 1635(f) provides that an “obligor’s right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this part have not been delivered to the obligor...”

29. 15 U.S.C. § 1640(a) provides any creditor who fails to comply with any requirement imposed under this part, including any requirement under section 1635 of this title, subsection (f) ... with respect to any person is liable to such person in an amount equal to the sum of – (1) any actual damage sustained by such person as a result of the failure;

30. M&T failed to provide the Plaintiff with the necessary disclosures resulting in material violations.

31. M&T did not provide the Plaintiff with the Right to Rescind disclosure.

32. M&T's concealment and lack of disclosures has caused Plaintiff actual and statutory damages.

WHEREFORE, Plaintiff, SAMINA SULTAN, prays this Honorable Court to enter judgment in her favor and against Defendant, M&T BANK, award Plaintiff actual damages, award Plaintiff statutory damages, award Plaintiff her costs of suit and litigation expenses and reasonable attorney's fees and any further relief this Honorable Court deems just and proper.

**COUNT II**
**SULTAN v. M&T BANK**
**Violation of Truth-In-Lending Act**

33. Plaintiff repeats and realleges paragraphs 1 through 22 as though fully set forth herein.

34. Section 15 U.S.C. 1638(a)(2)(B)(iii) of TILA provides that a creditor shall disclose an itemization of "each amount that is or will be paid to third persons by the creditor on the consumer's behalf, together with an identification of or reference to the third person".

35. 12 CFR 226.18(c)(1)(iii) provides that a creditor shall disclose "a separate written itemization of the amount financed, including. . . any amounts paid to other persons by the creditor on the consumer's behalf. The creditor shall identify those persons."

36. M&T failed to provide the Plaintiff with any itemization of payments to third parties.

37. M&T failed to itemize the any payments that were made prior to closing or finalizing the transaction.

38. The $21,300.00 in phantom financing M&T extended to the Plaintiff is not a bona-fide and reasonable amount.

39. The phantom financing caused Plaintiff to incur additional and unlawful finance charges.

40. M&T's false representation caused Plaintiff actual and statutory damages.

WHEREFORE, Plaintiff, SAMINA SULTAN, prays this Honorable Court to enter judgment in his favor and against Defendant, M&T BANK, award Plaintiff actual damages, award Plaintiff statutory damages, award Plaintiff her costs of suit and litigation expenses and reasonable attorney's fees and any further relief this Honorable Court deems just and proper.

**COUNT III**

**SULTAN v. M&T and BAYVIEW**

**Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act**

41. Plaintiff repeats and realleges paragraphs 1 through 22 as though fully set forth herein.

42. On information and belief, BAYVIEW acted as the servicing agent for the creditor, M&T.

43. On information and belief, BAYVIEW acted at the direction of M&T.

44. M&T Bank failed to provide the required disclosures to the Plaintiff for the refinancing of the Plaintiff's mortgage loan secured by a principal dwelling.

45. M&T extended new money to the Plaintiff in the amount of one hundred two thousand six hundred eighty-seven dollars and sixty-nine cents ($102,687.69), which includes twenty-one thousand three hundred dollars ($21,300.00) of phantom financing.

46. BAYVIEW, materially misrepresented the amount of new credit being extended to Plaintiff.

47. Defendants, collectively, materially concealed the amount of phantom financing to the Plaintiff by failing to provide the necessary disclosures explaining the cost of new credit being extended to Plaintiff.

48. Defendants, collectively, intended that Plaintiff rely upon their calculations and statements concerning the amounts due and owing on the account at issue.

49. Plaintiff relied upon the collective representations of the Defendants in the loan modification documents.

50. M&T inconspicuously provided Plaintiff with figures for a loan modification without providing a detailed truth-in-lending statement outlining the amounts of new credit extended as well as the extension of the phantom credit.

51. M&T's failure to provide the necessary disclosures does not give the Plaintiff adequate notice to make an informed decision.

52. Defendant's misrepresentation of the capitalized cost of the loan caused Plaintiff to incur damages in the form of excessive principal and interest charges.

53. Defendant's misrepresentation has placed the Plaintiff in a misinformed position.

54. Defendant's failure to properly account for the loan charges has caused the Plaintiff to make an uninformed decision.

55. Defendant's concealed finance charges ("Phantom Financing") in the amount of twenty-one thousand three hundred dollars ($21,300.00).

56. Plaintiff could not possibly make a complete and informed decision without the disclosure of the true cost of the Phantom Financing.

57. Defendants conduct caused unnecessary stress and anxiety to the Plaintiff.

WHEREFORE, Plaintiff, SAMINA SULTAN, prays this Honorable Court to enter judgment in his favor and against Defendant, M&T BANK, award Plaintiff actual damages, award Plaintiff statutory damages, award Plaintiff her costs of suit and litigation expenses and reasonable attorney's fees and any further relief this Honorable Court deems just and proper.

**COUNT IV**
**SULTAN v. BAYVIEW LOAN SERVICING, LLC**
**Violation of the Fair Debt Collection Practices Act**

58. Plaintiff repeats and realleges paragraphs 1 through 22 as though fully set forth herein.

59. Plaintiff is a consumer under 15 U.S.C. §1692a(3), as the subject mortgage loan created a debt and obligated her to repay a debt.

60. BAYVIEW qualifies as a debt collector under §1692a(6) as it uses an instrumentality of interstate commerce or the mails to carry out its principal business of collecting debts for others and enforce security interests. Moreover, BAYVIEW acquired servicing or an ownership right to the loan after the loan was in default.

61. BAYVIEW violated 15 U.S.C. §1692e(2) by misrepresenting the amount owed on the account after taking into consideration all outstanding arrears and advances, if any, made on the account.

62. BAYVIEW capitalized to Plaintiff's loan and charged in excess of $21,300.00 plus interest over a term of 40 years.

63. BAYVIEW's failure to disclose the basis for the additional $21,300.00 in the Adjusted Modified Principal balance.

64. On January 22, 2016, BAYVIEW misrepresented the total amount due and owing by the Plaintiff to Defendant M&T under the terms of her mortgage loan.

65. The error is the direct result of a failure by BAYVIEW to properly account for the outstanding unpaid principal balance, escrow advances and monies held in suspense.

WHEREFORE, Plaintiff SAMINA SULTAN respectfully requests that this Honorable Court enter judgment in his favor and against BAYVIEW LOAN SERVICING, LLC; declare that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations; award Plaintiff statutory and actual damages, in an amount to be determined at trial; award Plaintiff costs and reasonable attorney fees under 15 U.S.C. §1692k; and award any other relief as this Honorable Court deems just and appropriate.

Respectfully Submitted,

/s/David R. Sweis

David R. Sweis, Esq.

**SWEIS LAW FIRM, P.C.**
**2803 Butterfield Rd., Suite 170**
**Oak Brook, IL 60523**
**Ph. 630-575-8505**
**Fax. 312-268-7284**
**www.sweislaw.com**